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Judgment of the General Court in Case T-334/19 | Google and Alphabet v Commission (Google AdSense for Search)

Google AdSense: The General Court annuls the Commission's decision

The General Court upholds the majority of the Commission's findings but annuls the decision by which the Commission imposed a fine of almost €1.5 billion on Google, on the ground inter alia that it failed to take into consideration all the relevant circumstances in its assessment of the duration of the contract clauses that the Commission had deemed abusive

Google has operated since 2003 an advertising platform called AdSense. Google has developed in that regard various services including, in particular, an online advertising intermediation service called AdSense for Search ('AFS').

AFS allowed the publishers of websites containing integrated search engines to display ads linked to the online queries that users could submit on those websites. In that way, publishers could receive a part of the revenues generated by the display of those ads. To use AFS, publishers generating sufficient turnover could inter alia negotiate with Google a 'Google Services Agreement' ('GSA'). GSAs however contained clauses restricting or prohibiting the display of ads from services competing with AFS.

In 2010, an initial German undertaking lodged a complaint with the German Federal Cartel Office, which was transferred to the European Commission. Between 2011 and 2017, other undertakings, including Microsoft, Expedia and Deutsche Telekom, lodged additional complaints.

In 2016, the Commission initiated proceedings relating to three clauses contained in GSAs (referred to in the judgment as 'exclusivity clause', 'placement clause' and 'prior authorisation clause'). It indicated that those clauses could foreclose services competing with AFS. In September 2016, Google removed or amended the said clauses.

In March 2019, the Commission found that Google had committed three separate infringements constituting, together, a single and continuous infringement, from January 2006 to September 2016. It imposed a fine of € 1 494 459 000 on Google, € 130 135 475 of which jointly and severally with its parent company Alphabet.

By today's judgment, the General Court, after having upheld the majority of the Commission's findings, concludes that that institution committed errors in its assessment of the duration of the clauses at issue, as well as of the market covered by them in 2016.

It follows that, according to the General Court, **the Commission has not established that the three clauses that it had identified each constituted an abuse of a dominant position and together constituted a single and continuous infringement of Article 102 TFEU. The General Court annuls the Commission's decision in its entirety.**

In particular, the General Court finds that the Commission has not demonstrated that the clauses in question had been capable of deterring publishers from sourcing from Google's competing intermediaries or that they had been

capable of preventing those competitors from accessing a significant part of the market for online search advertising intermediation in the European Economic Area (EEA) and, consequently, that those same clauses had been capable of having the foreclosure effect found in the contested decision.

According to the General Court, the Commission failed to take into consideration all the relevant circumstances of the case in the context of the assessment of the duration for which publishers had been subject to those clauses. Many of the GSAs to which those publishers had been subject had, individually, a duration of only a few years, even if they had been renewed or extended thereafter, sometimes several times. The General Court criticises the Commission for having confined itself, in its decision, to taking into account the cumulative duration of the GSAs to which those publishers had been subject, without also verifying whether publishers had had the opportunity to source from Google's competing intermediaries, during the negotiation of any renewals or extensions of those GSAs or, depending on the case, where publishers enjoyed a unilateral termination right in respect of the said GSAs. Furthermore, after having upheld the majority of the Commission's findings on the part of the market covered by the said clauses, the General Court concludes that the Commission did not establish that those clauses could have produced a foreclosure effect, owing to their coverage, in 2016, in the absence of data pertaining specifically to that year.

In those conditions, the General Court holds that the Commission has also not demonstrated that the clauses in question had, first, possibly deterred innovation, next, helped Google to maintain and strengthen its dominant position on the national markets for online search advertising at issue and, last, that they had possibly harmed consumers.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The [full text and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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